

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

February 6, 2017

Mark Sanders
Westpoint Harbor LLC
1529 Seaport Boulevard
Redwood City, California 94063

SUBJECT: West Point Harbor Permit Amendment No. Seven Application
(BCDC Permit Application No. 2002.002.07)

Dear Mr. Sanders:

Thank you for your application for a non-material amendment to your major permit, dated January 4, 2017, received in this office on January 5, 2017, to construct additional structures at 1529 Seaport Boulevard, Redwood City, San Mateo County.

One purpose of this amendment is to allow you to make the required public access trail available with the installation of a temporary fence around the Phase 3 building area, as discussed with BCDC staff during their site visit on December 8, 2016. The addition of the public access decks, though mentioned during the site visit, and the rower's boathouse were unexpected, and may result in a longer, more complicated permitting process. In your application letter, you indicated that the decks and the boathouse were included as corrections to Amendment No. Six of the permit. However, upon review of the amended permit conditions and the Findings and Declarations of Amendment No. Six, I found that the permit was amended to authorize only two boathouses, sized 8,000-square-feet and 10,000-square-feet. Therefore, it appears that the proposed rower's boathouse is an additional structure, perhaps in a new location, and will require review.

Furthermore, when you signed and, thereby, executed the amended permit, you signaled your affirmation that the permit was reviewed by you and deemed to have been amended correctly. Even if the final approved plans contain any discrepancies, Special Condition II.A.3, "Discrepancies between Approved Plans and Special Conditions," states that in case of any discrepancy between the final approved plans and the Special Conditions of the permit, the terms of the permit shall prevail. Further, the condition affirms that it is the permittee's responsibility to make sure that all plans accurately reflect the permit conditions prior to executing the permit. Therefore, the public access decks and the rower's boathouse will be evaluated as new fill.

Our review of the application has determined that it is incomplete, and may not be filed as complete until you submit the following items:

1. **Additional Project and Site Information.** From reviewing your application, it appears that the proposed project would involve the following activities in the Commission's jurisdiction generally in the location of the property referred to as Phase 3 throughout your permit:
 - a. Install, use and maintain in-kind a temporary, approximately 2,600-foot-long, up-to-five-foot-high fence, composed of "2x3 wire", on the western end of the property.
 - b. Construct, use and maintain in-kind two approximately 1,500-square-foot public access decks, to be included as part of the future boardwalk, extending from the public access path east toward the marina basin, overlooking the marina and rowers dock.
 - c. Construct, use and maintain in-kind an approximately 6,000-square-foot rower's boathouse.

With regard to the proposed temporary fence, it is my understanding that it would be erected promptly following authorization, would be maintained through the completion of Phase 3 of the project, and would be removed immediately thereafter.¹ In your written response to this letter, please either affirm that, if approved, the fence would be erected following authorization and removed immediately upon completion of the work authorized in Phase 3 of the project, or else provide additional comments clarifying when the fence would be installed, how long you intend to keep the fence, and when, or under what conditions, you plan to remove it. In addition, please identify the source of the "[p]rior language to describe the temporary fence" quoted in your application.

¹ As BCDC's Chief Counsel, Marc Zeppetello, mentioned during the December 8, 2016 site visit, staff is in the process of preparing a Violation Report/Complaint for the Imposition of Administrative Civil Penalties related to the violations, including failure to timely provide required public access, first identified by staff in an enforcement letter dated May 4, 2011. In addition, as you know, since that time, Mr. Zeppetello has been discussing with your counsel, David Smith, the possibility of negotiating a stipulated administrative order with you to resolve some or all of those violations. In processing your application to amend your permit to erect the requested fence, BCDC staff does not concede that such fencing is necessary to allow public access to areas that were required be accessible to the public since occupancy of the marina berths, or no later than September 2008, and staff reserves the right to seek an order requiring all Phase 1B public areas to be opened for public access without any fence (at least until Phase 3 is under active construction), even if such an order would require the removal of fencing authorized by the requested permit amendment.

In your written response and on the site plan, you must indicate the area that will be encompassed by the fence, and indicate how close to the required public access trail that the fence will be (there should be a gap between the fence and the path). Also, include a description and an illustrated example of the type of fencing material you intend to use.

With regard to the two proposed public access decks, it is unclear where these structures would be located on the property and precisely how you intend them to be used (e.g., To enable the public to access the water and/or launch small water craft, or as public observation decks only?), or whether you intend to restrict their use to certain hours or types of visitors to the Harbor (e.g., Open for free public use at all times?). Please provide more details about their intended location and usage in your written response to this letter. It is also unclear whether the docks have already been built, or, if not, whether you intend to build these docks immediately or as part of Phase 3. Please clarify. Also, please provide the intended commencement and completion dates for the decks.

With regard to the proposed rower's boathouse, it is unclear whether this structure would be located entirely upland of or partially below the Mean High Tide line. Please provide more detail about its intended location in your written response to this letter and in the site plans requested below. Also, please provide the intended commencement and completion dates for the boathouse.

Please address the potential impacts to the existing required public access that may result from the construction and operation of the rower's boathouse in the proposed location. Please complete Box 5 of the enclosed permit application including the list of questions. For example, how many people will the boathouse serve? Who will use it? How will it be used? What kind of boats will you store in it? Will you need to close off public access along the shoreline at certain times to allow for the movement of boats from the boathouse to the Bay and visa versa? You may be required to offset potential adverse impacts to public access by providing new or augmenting existing required public access.

2. **Project Plans.** One full size set of project plans and one reduced size set of project plans (8-1/2" x 11") must be submitted. These plans must include, at a minimum, a vicinity map, site plan, property lines, existing and proposed structures (private and public, permanent and temporary) and improvements (including elevations and sections, if necessary), the Mean High Water line, a scale, a north arrow, and the date and the name of the person who prepared the plans. Please also include the former (pre-Amendment No. Six) intended location of the rower's boathouse. Additional information may be needed on the plans depending upon the scope of the proposed project. The plans must be clean and legible and all sizes.

3. **Photographs.** Presently dated photographs are required that clearly illustrate the intended locations of the proposed structures to be included in Amendment No. Seven, as well as the views to the Bay from: (1) the project sites and (2) nearby roads or public access areas where views to the Bay may be impacted in any way by the proposed structures.
4. **Total Project Cost.** In order to process your application, you must provide the total cost to complete all of the above improvements. Please include a thorough, comprehensive estimate of the total project cost in your written response to this letter.
5. **Application Processing Fee.** Your application appears to qualify for a non-material amendment to a major permit. Therefore, please submit the appropriate application fee, based on the total project cost, as prescribed in Appendix I of this letter, to enable the continued processing of the application.
6. **Local Government Approval.** Please submit all the relevant documentation demonstrating that all necessary local government discretionary approvals have been received for the fence, decks and boathouse in the proposed locations. If local government discretionary approvals are not required for these structures, please explain why not in your written response to this letter.
7. **Other Governmental Approvals.** Please provide the approval from the Regional Water Quality Control Board, if it is required, when it is available, and provide any consultation required with state and federal wildlife agencies. This information must be provided to us prior to filing the application complete. If it is not required, please explain why not in your written response to this letter.
8. **Environmental Documentation.** Please provide environmental documentation, as required under the California Environmental Quality Act (CEQA), in the form of a categorical or statutory exemption, negative declaration, or other certified environmental impact document for each of the proposed structures.

Until the above-mentioned information is submitted and reviewed for adequacy, your application will be held as incomplete.

Other Issues. In addition to the filing requirements cited above, the following matters should be considered in submitting additional materials to us as part of the application process.

1. **Relevant Conditions Related to Rising Sea Level.** The San Francisco Bay Plan includes policies related to rising sea levels due to climate change, which are applicable to all new fill proposals. Although BCDC Permit No. 2002.002 was issued prior to adoption of the updated policies regarding sea level rise, amendments to existing permits must be consistent with all currently-applicable policies, including the policies on sea level rise.

In order to ensure that the public access decks proposed in this amendment request remain viable in the event of flooding from sea level rise or storms, and to ensure that the rower's boathouse is constructed to prevent damage from sea level rise and storm activity during the expected life of the project, special conditions may be included as part of Amendment No. Seven related to sea level rise. The public access decks may be required to be maintained, repaired in-kind, replaced or removed, as needed, in order to ensure that the public access remains viable for the life of the project. In addition, the decks and the boathouse, either in whole or in part, may be required to be removed in the event they become abandoned structures as a result of damage due to rising sea levels or other effects of climate change.

2. **Public Notice.** Please find enclosed the "Notice of Application" form to be posted at or near the project site in a prominent location to notify members of the public about the pending application for the proposed project, which we may revised and resend pending receipt of your response to this letter.

If you have any questions, please do not hesitate to contact me at 415-352-3633 or mtrujillo@bcdca.gov.

Sincerely,



MATTHEW TRUJILLO
Coastal Analyst

Enc.

MT/gg

Appendix I. Fee Schedule for Permit Amendments Arising Out of Enforcement Actions*
(adapted from 14 CCR, Division 5, Appendix M)

Nonmaterial Amendment To a Major Permit	
Total Project Cost	Fee (Doubled)
- Less than \$5,000	\$200
- \$5,000 to \$50,000	\$300
- \$50,001 to \$100,000	\$400
- \$100,000 to \$600,000	\$1200
- \$600,001 to \$100 million	0.20% of TPC
- more than \$100 million	\$200,000

*Fees are doubled for applications arising out of enforcement actions.

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

BCDC PERMIT APPLICATION NO. 2002.02.07

Name of permittee

CERTIFICATION OF POSTING OF NOTICE

Matthew Trujillo

San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, California 94102

RE: West Point Harbor Permit Amendment No. Seven Application to Install, use and maintain in-kind a temporary, approximately 2,600-foot-long, up-to-five-foot-high fence, on the western end of the property. Construct, use and maintain in-kind two approximately 1,500-square-foot public access decks. Construct, use and maintain in-kind an approximately 6,000-square-foot rower's boathouse.

(brief description of project)

I,

(name of applicant or agent)

hereby certify that on _____

(date)

I or my agent or employee posted in a prominent location at or near the project site the Notice of Application provided by the San Francisco Bay Conservation and Development Commission.

Date: _____

By: _____

(Signature)

Title: _____

(Title)

DATE POSTED: _____

NOTICE OF PERMIT APPLICATION

NOTICE is hereby given that:

[APPLICANT NAME] has applied for a permit to the **SAN FRANCISCO BAY CONSERVATION & DEVELOPMENT COMMISSION** to:

West Point Harbor Permit Amendment No. Seven Application to Install, use and maintain in-kind a temporary, approximately 2,600-foot-long, up-to-five-foot-high fence, on the western end of the property. Construct, use and maintain in-kind two approximately 1,500-square-foot public access decks. Construct, use and maintain in-kind an approximately 6,000-square-foot rower's boathouse.

at a **PROPERTY** known as:

Westpoint Harbor

Comments or questions on the proposed project should be submitted immediately in writing
or by contacting the Commission,

Attn: Matthew Trujillo at 415-352-3633 or mtrujillo@bcdcc.ca.gov

Permit application, any supplementary materials and notice of any hearings related to the
above project, are available for review upon request.